IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.3142 of 2007

M/s.Rohan Construction Applicant
Vs.
Raja Shri Shivraya Pratishtan & ors. Respondents

Mr.C.K.Pendse i/b. Mr.M.S.Mohite for applicant.
Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.

October 1, 2007.

P.C.

. Heard the learned counsel for the applicant who is complainant in Criminal Complaint No.2112 of 2005. After his evidence was recorded i.e. on completion of his cross-examination on 18/9/2006 before the trial Court in support of his complaint, an application came to be submitted at Exhibit 103 purportedly under Section 311 of Cr.P.C. It was stated in the said application that the receipts at Exhibits 87 and 88 indicating that the complainant - Firm had received an amount of Rs.10 lakhs each by the said receipts were tampered with or interpolated in some description and, therefore, they should be referred to the handwriting expert and one Anil Kumar Mathur who is Forensic examiner in Forgery Detection Private Bureau be called as an additional witness.

This application was filed on 5/12/2006 and the accused opposed the same by filing say on 8/1/2007. By the impugned order dated 11/5/2007, the learned Judicial Magistrate, First Class at Pune was pleased to reject the said application on the grounds that, (a) in his cross-examination the complainant (Shri Chakrapani Domaji Deshmukh) admitted that he had received an amount of Rs. 10 lakhs each as acknowledged in the receipts at Exhibits 87 and 88, (b) he admitted the signatures on the said receipts and (c) that the application under Section 331 of Cr.P.C. for examining an additional witness could not be entertained on the face of the admissions regarding the receipts.

. The learned counsel for the applicant has placed reliance on the decision in the case of Mrs. Kalyani Baskar Vs. M.S.Sampoornam **[2007 All M.R. (Cri) 820 (SC)]** and submitted that the application ought to have been allowed. As noted earlier, the application claimed to have been filed under Section 311 of Cr.P.C. was for two specific prayers viz. (a) to refer the receipts at Exhibits 87 and 88 for examination by the handwriting expert and (b) to examine Shri Anil Kumar Mathur as an additional

witness. With the help of the learned counsel, I have gone through the cross-examination of the complainant and in para 24 of the same the complainant clearly admitted to have received Rs.10 lakhs as per the receipt at Exhibit 87 but on 10/5/2004 and not on 18/5/2004 as stated in the receipt, and received an amount of Rs.10 lakhs vide receipt at Exhibit 88 on 12/5/2004 and not on 22/5/2004 and received an amount of Rs.10 lakhs vide receipt at Exhibit 89 by cheque on 14/8/2004. The receipts at Exhibits 87 and 88 state that the amount of Rs.10 lakhs each was received in cash whereas the amount of Rs.10 lakhs received vide Exhibit 89 was by cheque. It was submitted by the learned counsel for the applicant that the payment of Rs.20 lakhs received in cash was not against the dishonoured cheque bearing No.189208 and in fact it was in respect of some other transaction. In both the receipts the last column reads "Cash / against Cheque No.189208 dated 15.5.2004". It is not known as to why while in the witness box the complainant did not object to these inscriptions and after almost three months an application came to be filed as stated hereinabove. The onus of proving that the amount of Rs.10 lakhs was not received against the dishonoured

cheque squarely rests on the complainant and he is not estopped from producing documentary evidence in support of his case that the said amount of Rs.20 lakhs in cash was not received against the dishonoured cheque bearing No.189208 inspite of the fact that his application at Exhibit 103 has been rejected. Such liberty the complainant still has by taking steps to adduce further evidence.

. With the clarifications, I am satisfied that no interference is called for in the order passed by the trial Court. The application is rejected

(B.H.MARL